

ACTION ON DECISION

Subject: Ronald Andrew Mayo and Leslie Archer Mayo v. Commissioner,
136 T.C. 81 (2011)

Issue: Are expenses incurred by a taxpayer in the trade or business of gambling “losses from wagering transactions” subject to the limitation on deductions in § 165(d) of the Internal Revenue Code?

Discussion: Ronald Mayo (“Taxpayer”) was in the trade or business of gambling on horse races. In 2001, Taxpayer incurred \$10,968 of business expenses. He also had an \$11,297 loss from wagering (wagering gains of \$120,463 less wagering losses of \$131,760). On his Schedule C, Taxpayer deducted both the \$11,297 wagering loss and the \$10,968 of business expenses (\$22,265 total deductions).

The Service disallowed the entire \$22,265 deduction under § 165(d), which limits deductions for wagering losses to the amount of wagering gains. The Service argued that Taxpayer’s business expenses of \$10,968, as well as the \$11,297 wagering loss, were “losses from wagering transactions” within the meaning of § 165(d). Therefore § 165(d) prevented Taxpayer from deducting both amounts. Taxpayer asserted that the limitation in § 165(d) does not apply to persons engaged in the trade or business of gambling. Alternatively, Taxpayer argued that if § 165(d) applies to persons engaged in the trade or business of gambling, the §165(d) limitation does not apply to gambling related business expenses, because business expenses are not “losses from wagering transactions.”

The Tax Court held that the limitation in § 165(d) applies to persons engaged in the trade or business of gambling, and therefore taxpayer may not deduct the \$11,297 of excess wagering losses over wagering gains. The court further held that a gambler’s business expenses are not “losses from wagering transactions” subject to the § 165 deduction limitation. Therefore, the court allowed Taxpayer’s deduction under § 162(a) for the \$10,968 of gambling related business expenses. The court further announced that it will no longer follow the contrary holding of Offutt v. Commissioner, 16 T.C. 1214 (1951), and other cases applying the § 165(d) deduction limitation to § 162 business expenses.

We agree with the court's analyses. Section 165(d) limits the deduction for the wagering losses of persons engaged in the trade or business of gambling. However, § 165(d) does not limit deductions for expenses incurred to engage in the trade or business of gambling. Those business expenses are deductible under § 162.

Recommendation: Acquiescence.

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